

in the case of an accommodation endorsement by an endorser who assumes the obligation other than in the course of the endorser's trade or business.

(c) *Qualified property.* Except as provided under paragraph (d) of this section, the term "qualified property," for purposes of this section, means property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing and, to the extent that the acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term "qualified property" shall be treated as also including:

(1) The proceeds of the contract the performance of which was insured, and

(2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(26 U.S.C. 6323)

#### *Limitations on Levies*

SOURCE: Sections 70.241 through 70.245 added by T.D. ATF-301, 55 FR 47646, Nov. 14, 1990, unless otherwise noted.

#### **§ 70.241 Property exempt from levy.**

(a) *Enumeration.* There shall be exempt from levy:

(1) *Wearing apparel and school books.* Such items of wearing apparel and such

school books as are necessary for the taxpayer or for members of the taxpayer's family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of the taxpayer's family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$1,650 in value. For purposes of this provision, an individual who is the only remaining member of a family and who lives alone is not the head of a family.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate \$1,100 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to that individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) *Undelivered mail.* Mail, addressed to any person, which has not been delivered to the addressee.

(6) *Certain annuity and pension payments.* Annuity or pension payments under the Railroad Retirement Act (45 U.S.C. chapter 9), benefits under the Railroad Unemployment Insurance Act (45 U.S.C. chapter 11), special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under 10 U.S.C. chapter 73.

(7) *Workmen's compensation.* Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the day of levy, to contribute to the support of such taxpayer's minor children, so much of the taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Chief, Tax Processing Center is not required to release a levy until such time as that official is satisfied that the amount to be released from levy will actually be applied in satisfaction of the support obligation. The Chief, Tax Processing Center may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period which shall be exempt from levy. Any request for such an arrangement shall be directed to the Chief, Tax Processing Center. Where the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy may at the discretion of the Chief, Tax Processing Center be allocated entirely to one salary, wage, or source of other income or be apportioned between the several salaries, wages, or other sources of income.

(9) *Minimum exemption for wages, salary, and other income.* Amounts payable to or received by the taxpayer as wages or salary for personal services, or as other income, to the extent provided in §§ 70.242 through 70.245 of this part.

(10) *Certain service-connected disability payments.* Any amount payable to an individual as a service-connected (within the meaning of 38 U.S.C. 101(16)) disability benefit under:

(i) 38 U.S.C. chapter 11, subchapter II, III, IV, V, or VI, or

(ii) 38 U.S.C. chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 shall be exempt from levy.

(11) *Certain public assistance payments.* Any amount payable to an individual as a recipient of public assistance under:

(i) Title 42 U.S.C. subchapter IV (relating to aid to families with dependent children) or 42 U.S.C. subchapter XVI (relating to supplemental security income for the aged, blind, and disabled), or

(ii) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test shall be exempt from levy.

(12) *Assistance under job training partnership act.* Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*) from funds appropriated pursuant to such Act shall be exempt from levy.

(13) *Principal residence exempt in absence of certain approval or jeopardy.* Except to the extent provided in § 70.166 of this part, the principal residence of the taxpayer (within the meaning of 26 U.S.C. 1034) is exempt from levy.

(b) *Appraisal.* The ATF officer seizing property of the type described in 26 U.S.C. 6334(a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.* No other property or rights to property are exempt from levy except the property specifically exempted by 26 U.S.C. 6334(a). No provisions of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

(26 U.S.C. 6334)

**§ 70.242 Wages, salary and other income.**

(a) *In general.* Under 26 U.S.C. 6334(a)(9) and (d) certain amounts payable to or received by a taxpayer as wages, salary or other income are exempt from levy. This section described the income of a taxpayer that is eligible for the exemption from levy (paragraph (b) of this section) and how exempt amounts are to be paid to the